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Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING DECISION OF THE
COMMISSIONER OF SOCIAL SECURITY

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

Plaintiff is a 27 year-old female who applied for Social Security Disability Insurance benefits on March 24, 2014, alleging disability beginning August 22, 2012. (AR 13.) The ALJ determined that Plaintiff had not engaged in substantial gainful activity since August 22, 2012, the alleged onset date. (AR 15.)

Plaintiff's claim was denied initially on May 2, 2014, and on reconsideration on May 29, 2014. (AR 13.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Richard T. Breen on March 10, 2016, in West Los Angeles, California. (AR 13.) Plaintiff appeared and testified at the hearing and was represented by counsel. (AR 13.) Medical expert ("ME") Irving Kushner, M.D. and vocational expert ("VE") Gregory S. Jones also appeared and testified at the hearing. (AR 13.)

The ALJ issued an unfavorable decision on March 24, 2016. (AR 13-20.) The Appeals Council denied review on May 11, 2017. (AR 1-3.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as ground for reversal and remand:

1. Whether the ALJ properly rejected Plaintiff's testimony regarding pain and functional limitations.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "more than a mere scintilla," but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a

1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
2 401 (internal quotation marks and citation omitted).

3 This Court must review the record as a whole and consider adverse as well as
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
5 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be
6 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
7 “However, a reviewing court must consider the entire record as a whole and may not affirm
8 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
9 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
10 F.3d 625, 630 (9th Cir. 2007).

11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any substantial
13 gainful activity by reason of any medically determinable physical or mental impairment which
14 can be expected to result in death or . . . can be expected to last for a continuous period of not
15 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
16 established a five-step sequential process to determine whether a claimant is disabled. 20
17 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in substantial
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
23 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
24 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
25 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
26 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
27 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
28 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.

1 2001). Before making the step four determination, the ALJ first must determine the claimant's
2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
3 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
4 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
5 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
6 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,
8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
11 consistent with the general rule that at all times the burden is on the claimant to establish his or
12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
16 demonstrating that other work exists in significant numbers in the national economy that the
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
19 entitled to benefits. Id.

20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
22 not engaged in substantial gainful activity since August 22, 2012, the alleged onset date. (AR
23 15.)

24 At step two, the ALJ determined that Plaintiff has the following medically determinable
25 severe impairment: rheumatoid arthritis. (AR 15-16.)

26 At step three, the ALJ determined that Plaintiff does not have an impairment or
27 combination of impairments that meets or medically equals the severity of one of the listed
28 impairments. (AR 16.)

1 The ALJ then found that Plaintiff had the RFC to lift and/or carry ten pounds occasionally
2 and less than ten pounds frequently, stand and/or walk up to two hours in an eight-hour
3 workday (no more than thirty minutes at a time), and sit up to six hours in an eight-hour
4 workday, with no more than occasional use of the bilateral lower extremities for foot controls;
5 no more than occasional overhead reaching with the right upper extremity; no more than
6 frequent handling and fingering with the bilateral upper extremities; no climbing ladders, ropes,
7 or scaffolds; no more than occasional kneeling, crouching, crawling, or climbing ramps or stairs;
8 and no more than frequent balancing or stooping. (AR 16-19.) In determining the above RFC,
9 the ALJ made a determination that Plaintiff's subjective symptom allegations were "not entirely
10 credible." (AR 17.)

11 At step four, the ALJ found that Plaintiff is able to perform her past relevant work as an
12 appointment clerk. (AR 19-20.)

13 Consequently, the ALJ found that Claimant is not disabled, within the meaning of the
14 Social Security Act. (AR 20.)

15 DISCUSSION

16 The ALJ decision must be affirmed. Plaintiff alleges that she is limited in her ability to
17 work due to rheumatoid arthritis causing joint pain at the shoulders, wrists, hands, and hips.
18 (AR 17.) Plaintiff does not challenge the ALJ's consideration of the medical evidence. She
19 challenges only the ALJ's adverse credibility finding. The ALJ, however, discounted Plaintiff's
20 subjective symptom allegations, to the extent inconsistent with the ALJ's RFC, for clear and
21 convincing reasons supported by substantial evidence. The ALJ's RFC is supported by
22 substantial evidence.

23 I. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S SUBJECTIVE SYMPTOMS

24 Plaintiff contends that the ALJ erred in discounting her subjective symptom allegations.
25 The Court disagrees.

26 A. Relevant Federal Law

27 The ALJ's RFC is not a medical determination but an administrative finding or legal
28 decision reserved to the Commissioner based on consideration of all the relevant evidence,

1 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
2 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence
3 in the record, including medical records, lay evidence, and the effects of symptoms, including
4 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

5 The test for deciding whether to accept a claimant's subjective symptom testimony turns
6 on whether the claimant produces medical evidence of an impairment that reasonably could be
7 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,
8 346 (9th Cir. 1991); see also Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Smolen, 80
9 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the
10 severity of symptoms merely because they are unsupported by objective medical evidence.
11 Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain
12 testimony not credible, the ALJ "must specifically make findings which support this conclusion."
13 Bunnell, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the
14 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas v.
15 Barnhart, 278 F.3d 947, 958 (9th Cir. 2002); see also Rollins v. Massanari, 261 F.3d 853, 856-
16 57 (9th Cir. 2001); Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering, the
17 ALJ can reject the claimant's testimony about the severity of a claimant's symptoms only by
18 offering "specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see
19 also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is not credible and what
20 evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1284.

21 **B. Analysis**

22 In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable
23 impairments reasonably could be expected to cause her alleged symptoms. (AR 17.) The
24 ALJ, however, also found that Plaintiff's statements regarding the intensity, persistence, and
25 limiting effects of her alleged symptoms were "not entirely credible." (AR 17.) Because the
26 ALJ did not make any finding of malingering, he was required to provide clear and convincing
27 reasons supported by substantial evidence for discounting Plaintiff's subjective symptom
28

1 allegations. Smolen, 80 F.3d at 1283-84; Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th
2 Cir. 2008). The ALJ did so.

3 First, Plaintiff failed to meet her burden to submit evidence of alleged pain in her
4 shoulders, hands, and wrists. (AR 18.) Social Security Regulations mandate that a claimant
5 must prove, not merely allege, disability. 20 C.F.R. § 404.1512(a); Ukolov v. Barnhart, 420
6 F.3d 1002, 1004 (9th Cir. 2005) (“The claimant carries the initial burden of proving a disability”
7 and “Failure to provide disability justifies a denial of benefits”). Here, the ALJ observed that the
8 record does not contain imaging studies of the shoulders, hands, or wrists and without such
9 evidence, “I cannot determine the extent to which, if any, the claimant’s pain at these joints can
10 be attributed to anatomical abnormalities.” (AR 18.) Plaintiff does not offer any objective
11 medical evidence regarding Plaintiff’s shoulders, hands, and wrists but only her own subjective
12 statements of pain, which are legally insufficient to establish disability.¹ 20 C.F.R.
13 § 404.1529(a) (claimant’s statements about pain or other symptoms will not alone establish
14 disability).² The ALJ nonetheless accommodated Plaintiff’s complaints about her hand and
15 shoulder pain in his RFC. (AR 19.)

16 Second, the ALJ found that Plaintiff’s subjective symptom allegations were inconsistent
17 with the objective medical evidence. (AR 18, 19.) An ALJ is permitted to consider whether
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20 ¹ Plaintiff offers a long list of record citations to her rheumatoid arthritis (JS 10:23-25), but
21 these citations mainly concern other body impairments, not her shoulders, hands, and wrists. No
22 citation mentions her wrists. There are two citations concerning her shoulders (AR 222, 350) and
23 one concerning her hands (AR 287), but these citations merely record her complaints to her
24 physicians. No objective medical evidence appears in the above citations regarding her
25 shoulders, hands and wrists nor any assessment of an impairment.

26 ² Plaintiff argues that the ALJ is not a medical expert and lacks the expertise to determine
27 whether Plaintiff’s anatomical abnormalities are in line with her complaints. This assertion is
28 misplaced because the ALJ is not rendering a lay medical opinion or making a medical
determination, but a RFC assessment (AR 19) that is an administrative finding or legal opinion
based on all the relevant evidence in the medical records, including medical evidence and
subjective symptoms such as pain reasonably attributable to a medical condition. See SSR 96-
5p; 20 C.F.R. § 1527(e). The ALJ is legally charged with the responsibility of evaluating all the
medical and non-medical evidence within the record in assessing a claimant’s RFC. See 20
C.F.R. § 404.1546(c).

1 there is a lack of medical evidence to corroborate a claimant's alleged symptoms so long as it
2 is not the only reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676,
3 680-81 (9th Cir. 2005). Here, an MRI of the right hip in November 2011 revealed evidence of
4 bilateral hip effusion, but the joint effusions were small and the remainder of the study was
5 normal. (AR 17, 18.) An X-ray of the right knee showed small to moderate joint effusion, but
6 there was no evidence of any significant bony abnormality (fracture or dislocation) or
7 degenerative change (joint space narrowing). (AR 18.) Plaintiff's rheumatologist Dr. Yoon Min
8 [Lim] observed tenderness and reduced range of motion at the joints but also observed a
9 mostly normal gait, and normal motor strength and sensation at the extremities. (AR 18.) Dr.
10 Min imposed no work restrictions. (AR 19.) In May 2014, the attending physician at Henry
11 Mayo Newhall Memorial Hospital observed abnormal functioning of the right knee, but he also
12 observed a full range of motion at the bilateral hips and ankles and normal motor strength at
13 the upper and lower extremities. (AR 18.) Two State agency reviewing physicians opined
14 Plaintiff could perform a reduced range of light work. (AR 19.) Plaintiff does not discuss or
15 even mention these RFC assessments. The ALJ summed up the objective medical evidence,
16 which he said shows a history of pain and swelling at the joints and anatomical abnormalities
17 and functional limitations of the lower extremities, but otherwise mostly normal cardiovascular,
18 musculoskeletal, neurological, and respiratory functioning. (AR 19.) The ALJ concluded that
19 cumulatively the objective medical evidence does not support a finding that Plaintiff is unable to
20 work (AR 18) and thus assessed Plaintiff with an RFC for a reduced range of sedentary work.
21 (AR 16, 19.)

22 Third, the ALJ found that Plaintiff has received routine, conservative treatment that has
23 resulted in improvement in her symptoms. (AR 18-19.) An ALJ may consider conservative
24 treatment in evaluating credibility. Tommasetti, 533 F.3d at 1039. Here, Dr. Min prescribed
25 medications for joint pain such as Humira, Naproxen, Vicodin, and Vitamin D. (AR 18.) He
26 also administered cortisone injections and infusion therapy. (AR 18.) Plaintiff consistently told
27 Dr. Min that the injections and infusion therapy were helpful. (AR 18.) She said a right hip
28 injection reduced her pain and she felt about 50% better. (AR 18.) Injections to her right

1 elbow, left knee and left foot helped significantly. (AR 18.) Impairments that can be controlled
2 effectively by medication are not disabling. Warre v. Comm'r of Soc. Sec., 439 F.3d 1001,
3 1006 (9th Cir. 2006). The ALJ concluded that the evidence of improvement with routine
4 treatment suggests Plaintiff's symptoms were not as serious as she alleged.³ (AR 19.)

5 Fourth, the ALJ found that Plaintiff did not comply with her treating physician's
6 recommendations. (AR 18-19.) An ALJ may consider unexplained or inadequately explained
7 failure to seek treatment or follow a treatment regimen in evaluating credibility. Tommasetti,
8 533 F.3d at 1039. Here, Dr. Min noted on several occasions Claimant did not take her
9 medications as prescribed. (AR 18.) She had stopped using Humira after her last visit and
10 was not taking the recommended dosage of Vitamin D. (AR 18.) In October 2014, Dr. Min
11 indicated he had not seen the Claimant for approximately nine months and she had not
12 followed up as instructed. (AR 18-19.) In October 2015, Claimant told Dr. Min that her pain
13 increased after she stopped taking Naproxen. (AR 19.) The ALJ reasonably concluded that
14 Claimant's failure to comply with treating recommendations suggests that her symptoms were
15 not as serious as she alleges. (AR 19.)

16 Plaintiff disagrees with the ALJ's interpretation of the record, but it is the ALJ's
17 responsibility to resolve conflicts in the medical evidence and ambiguities in the record.
18 Andrews, 53 F.3d at 1039. Where the ALJ interpretation of the record is reasonable, as it is
19 here, it should not be second-guessed. Rollins, 261 F.3d at 857; Thomas, 278 F.3d at 954
20 ("Where the evidence is susceptible to more than one rational interpretation, one of which
21 supports the ALJ's decision, the ALJ's conclusion must be upheld"). The ALJ discounted
22 Plaintiff's subjective symptom allegations for clear and convincing reasons supported by
23 substantial evidence. The ALJ's RFC is supported by substantial evidence.

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25 ³ Plaintiff contends that she was treated with strong medications that cannot be considered
26 conservative treatment, citing Huerta v. Astrue, 2009 WL 2241797, at *4 (C.D. Cal. July 22, 2009),
27 in which a series of epidural steroid injections in the spine were administered. Plaintiff, however,
28 does not cite to any epidural steroid injections in the spine and the ALJ decision does not cite
such treatments. Even if some of the medication could be considered not conservative, the ALJ
made specific findings that Plaintiff experienced substantial improvement from her medication
therapy that permitted her to work. See Warre, 439 F.3d at 1006.

* * *

The ALJ's nondisability determination is supported by substantial evidence and free of legal error.

ORDER

IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this case with prejudice.

DATED: April 23, 2018

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE